IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.140 OF 2007
IN
APPEAL FROM ORDER NO.784 OF 2001

Monocast Engineering Services & Anr. ..Applicants.

V/s.

Golden Heights 'B' Co-op.Housing Society Ltd. ..Respondent.

Mr.Pradip R. Kadam i/b. M.A.Narvekar for applicants.

Mr.Anil Singh for D.R.Shah for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : FEBRUARY 23, 2007.

P.C. :

1. Heard counsel for the parties.

2. Although this application is opposed by the respondent, in my opinion, in the interest of justice, application deserves to be allowed in terms of prayer clause (a) and (b) as it is well established position that no litigant should suffer for the mistake of the advocate.

3. The case of the appellants is that they had no knowledge about the matter listed before the Court on 10th June, 2003 or passing of the order on that

day dismissing the appeal for default. According to the respondent, however, the appellants had knowledge about the order. This assertion is only word against word. There is no reason to doubt the correctness of the case made out by the applicants for condonation of the delay and for restoration of the appeal from order.

4. Accordingly, this application is allowed in terms of prayer clause (a) and (b) only.

5. In so far as restoration of the order of status quo is concerned, it is made clear that the parties shall not alter the user of common terrace in any manner. However, it will be open to the respondent to continue repairing work including plumbing, painting, water proofing of the building including of common terrace without alteration of user of common terrace. This however, will be without prejudice to the rights and contentions of both the parties in the present proceeding as well as in the main proceeding.

6. Application disposed of on the above terms.